

# Contracts

## Trading under the law

When you go into business, the law is ready for you. You have the right to trade for profit, *without prior registration*. The same law that protects you now, is the law which can safeguard your business transactions. This is the law of **contract**.

A contract is formed when an offer is made and accepted. **Offer plus Acceptance equals Contract**.

A contract is an agreement between free and equal people or **juristic persons** (for example, companies), known for the purposes of contract law, as **parties**, to **exchange** something for another thing. Usually goods and/or services are exchanged for money.

Most citizens, you included, make many contracts every day. **Contracts do not have to be written, or even spoken**. Every time you buy something, a contract is made and completed. It is capable of being taken to a court if one party believes the contract was not properly completed by the other party, provided that there is evidence.

Neither party can be forced into a contract.

Building contractors are particularly dependent on the proper working of the law of contract, and need to understand it very well.

The full power of the **law courts** is available to contracting parties if they are in dispute. There is also a procedure called **arbitration** which can be cheaper and quicker than a court.

The contractor's aim is to avoid disputes. A good form of contract will help both parties to reach the full conclusion of their contract without disagreement.

## **What is a Contract ?**

**A contract is an agreement to exchange one thing for another (usually goods and/or services on the one side, for money on the other).**

**A contract is formed when an offer to exchange is made by one person and accepted by another. From the moment of acceptance it is binding and can be enforced by a court of law.**

**Neither person (“party”) has a right to renegotiate or add conditions to a contract. Variations have to be by agreement of both parties.**

**A contract does not have to be in writing (or even spoken) but there must be evidence of an offer and an acceptance.**

**The best evidence is a written document in two copies, each signed by both parties, one copy kept by each.**

**In a building contract, the drawings and specifications of the building should be incorporated into the contract as evidence of the work that is supposed to be done (i. e. the “deliverable”) in exchange for the contract price.**

**The terms of a contract cannot be forced upon one party by the other, but are freely negotiated during a process of offer, counter-offers, and acceptance.**

**Draft forms of contract are widely available from a number of different sources – but if you keep in mind all of the above you should safely be able to make up your own.**

# Tenders

The tender process is a modified way of negotiating a contract.

The difference is that the first party does not start with an offer, but with a general invitation to offer.

Therefore a tender is an invitation to contractors (entrepreneurs, business people *et cetera*) to make an offer to do a specified service or provide a specified product, within specified terms and conditions.

So in the case of tenders, the terms and conditions of the contract, as well as the “deliverable”, are all set by the initiating party (which is typically a government department).

The contractor must only name the price.

## **Procedure**

The initiating party announces the tender, makes the documents available, and sets the closing date for the tender offers to be in.

A box, like a ballot box, will be placed at a given venue, so that contractors can put in their offers. This box will be closed at the given time and no further offers are supposed to be received.

The announcement of the successful tenderer will be made some time later.

## **Argument in favour of tenders**

The tender system, if conducted properly and in good faith, is a way to avoid corruption. It should mean that all potential suppliers have an equal chance of getting work, and it should mean that the buyer, whether a public or a private entity, should be able to choose between suppliers in a reasonable way, and in a way that leaves an “audit trail”, so that it can be reviewed after the event, if there are queries.

## Documents

Tender documents can be divided into sections, as follows:

Section	Purpose
<b>Tender Form</b>	Short form with space for the contractor's name, address, and signature, and the offer price. Usually one sheet of paper. This is the main offer document
<b>Contractor's Details</b>	Forms asking for information: the profile, or "CV", of the contractor.
<b>Affirmative Details</b>	Matters held to be relevant to South African affirmative procurement policy.
<b>Specific Conditions</b>	Conditions which apply to the particular contract only.
<b>General Conditions</b>	Standard conditions of contract used by the tendering party.
<b>Description of "Deliverable"</b>	Specification of the products and/or services to be provided by the contractor.

## Who Wins?

The tendering party is usually most concerned to get a result. It is of no use to him to appoint the contractor offering the lowest price, if that contractor is not going to be able to deliver.

Therefore the tendering party is expected to look first at the profiles of the tendering contractors, so as to judge which ones are most capable of performing the contract according to the specifications.

Then only would the tendering party be expected to look at the prices, adjusted of course in line with current procurement policy.

In general, the tendering party's aim is to secure the products or services he wants, up to specification and on time, at a **reasonable** price, but not necessarily the lowest price.

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**Course: Induction**

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